

## RETIREMENT OF JUSTICE WILLIAM H. MOODY.

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JUNE 17, 1910.—Committed to the Committee of the Whole House and ordered to be printed.

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MR. CLAYTON, from the Committee on the Judiciary, submitted the following

### REPORT.

[To accompany H. R. 26877.]

The Committee on the Judiciary, to whom was referred the bill (H. R. 26877) to permit William H. Moody, as associate justice of the Supreme Court of the United States, to retire, having had the same under consideration, submits the following report to the House:

#### THE FACTS.

Mr. Justice Moody's public service began as a Member of the House of Representatives in the Fifty-fourth Congress and continued during the successive Congresses until he became Secretary of the Navy on May 1, 1902. He served as Secretary of the Navy until he was appointed Attorney-General on July 1, 1904. In the last-named capacity he served until his appointment as an associate justice of the Supreme Court on December 3, 1906. He accepted this place at a great pecuniary sacrifice. Before he knew it would be offered to him he had given notice of his intended resignation as Attorney-General, and had arranged to enter a law firm in Boston with the guaranty of an income several times in excess of the salary of associate justice. He surrendered that practice, or opportunity, in order to serve his country in the office of his highest ambition.

His illness began in the midwinter of 1909 with an attack of lumbago, from which he suffered severely while on the bench. In the following spring, during the recess of the court, he was treated for rheumatism at Hot Springs, Va. After treatment there, lasting a month or more, he lost weight, his condition became worse, and he then went to New York, where eminent physicians treated him for rheumatic gout for three months. However, there was no improvement in his health. In September thereafter, he went back to his home in Massachusetts, and had the advice and services of skilled

physicians, who pronounced his case to be the kind of rheumatism which was formerly incurable, but now curable. He became better and his pain and suffering became less frequent and violent. The physicians there assured his friends as late as last November that he would get well, and he expected to return to his work on the bench in February last. During the last month severe pain has frequently returned to him. He is much emaciated, has no appetite for food, his digestion is seriously impaired, and he is now confined to his bed in a hospital at Boston. His friends and advisers hope that he can recover his health, but it is only a hope.

Your committee is of opinion that it is very doubtful whether he can resume his duties on the bench. It is most likely that he will never be able to do so.

#### THE LAW.

There is no way of removing an associate justice from his office, except by impeachment, and impeachment can be had only after conviction of high crimes and misdemeanors.

The judges, both of the supreme and inferior courts, shall hold their offices during good behavior. (Const., Art. III, sec. 1.)

A judge may die, resign, or retire under the statute, but of course he can not, and should not, be impeached for ill health.

Section 714, of the Revised Statutes of the United States, is in the following language:

When any judge of any court of the United States resigns his office, after having held his commission as such at least ten years, and having attained the age of seventy years, he shall, during the residue of his natural life, receive the same salary which was by law payable to him at the time of his resignation.

Mr. Justice Moody was born December 25, 1853, was appointed associate justice on December 3, 1906, and therefore lacks thirteen years and six months of being 70 years of age. And his service falls short of the requirements of the retirement statute by six years and five months.

#### THE NECESSITY FOR A FULL BENCH.

The Supreme Court is composed of one Chief Justice and eight associate justices. Therefore while Mr. Justice Moody is absent from the bench the court is composed of eight justices. The wisdom of having the court of the odd number of nine is apparent. It is unfortunate in any case to have an evenly divided court. The possibility of such a division ought to be avoided whenever practicable. Especially ought such a possibility be avoided when there is much important litigation involving questions of far-reaching consequences, now pending before the court. There ought to be a full bench.

#### PRECEDENTS.

We are not without precedents. This bill is substantially in the terms of the act approved January 27, 1882, by which Justice Ward Hunt of the Supreme Court was retired before he had served the statutory period of ten years. The difference between the case of Justice Hunt and the case of Justice Moody is that there was no hope of the former's recovery, hence the time of service at the end of which

he could resign, as provided in Revised Statutes, 714, was made shorter. Mr. Justice Moody is comparatively a young man, and always enjoyed good health until he was attacked by violent and possibly progressive rheumatism, under which he now suffers. It is to be hoped that he may recover within the next six months, and as no appointment would be made until the Senate is in session next December it is deemed right that this time should be afforded.

The act providing for the retirement of Mr. Justice Hunt is in the following terms:

\* \* \* That the provisions of section seven hundred and fourteen of the Revised Statutes be, and they are hereby, extended and made applicable to Ward Hunt, an associate justice of the Supreme Court of the United States, in consequence of his physical disability, notwithstanding he has not served the full term of ten years as required by the aforesaid section: *Provided*, That the said Ward Hunt shall resign the said office of associate justice of the Supreme Court of the United States within thirty days after the passage of this act.

Approved January 27, 1882.

On December 14, 1900, Mr. Ray, from the Committee on the Judiciary, reported to the House favorably S. 5076 (56th Cong., 2d sess., H. Rep. 2025). The report in part is as follows:

The Committee on the Judiciary, to which was referred the bill (S. 5076) to provide for the appointment of an additional district judge in and for the northern judicial district of the State of Ohio, has considered same and unanimously reports:

The speedy enactment of this bill into law is demanded by existing conditions affecting the public welfare in the northern judicial district of the State of Ohio that can not otherwise well be met. There is no provision of law for the retirement of judges of the United States courts on account of permanent mental or physical incapacity, and it has not been deemed wise to attempt to place such a law on the statute book. That question has been several times considered by the Committee on the Judiciary in different Congresses, and the conclusion has always been the same, regardless of political considerations. The objections and difficulties are numerous and substantial. In the northern judicial district of Ohio the district judge is permanently incapacitated, and this condition of things has existed for nearly three years. The work has been continued spasmodically by calling in other judges from time to time, but is rapidly running behind, and the public as well as private interests suffer.

The measure became a law on December 19, 1900.

On January 14, 1898, Mr. Lanham, from the Committee on the Judiciary, reported to the House favorably H. R. 6554 (55th Cong., 2d sess.; H. Rep. 131). We quote from the report:

The Committee on the Judiciary, to which were referred divers petitions from the attorneys at law in the counties of Collin, Clay, Eastland, Wise, Potter, Taylor, Tarrant, Wilbarger, Wichita, Hood, Runnels, Bosque, and Hill, in the State of Texas, and situated within the northern judicial district of said State, praying for relief in the matter of the judgeship of said northern district; and also House bill No. 5512, relating to the appointment of an additional district judge, have had the same under consideration, and respectfully report in lieu of said bill, and as responsive to said petitions, the bill herewith submitted, and recommend its passage.

There is evidently an urgent necessity for the relief prayed for. The present judge of said district, as the result of permanent ill health and disability, has not been able to preside at any of the courts in said district for a period of almost or quite three years, nor does it seem at all probable that he will ever be able to resume and discharge the duties of the bench. For the past two years he has been out of the district.

The district is a large one, embracing territorially more than 100,000 square miles, and containing 111 counties. Courts are provided by law to be held at five places in said district, to wit, Waco, Dallas, Fort Worth, Abilene, and San Angelo. The three first named are among the largest cities in Texas. The dockets are crowded. There are, in addition to the large volume of civil business pending in said courts, criminal cases which it has been impossible to dispose of, and in which the Government has been unable to secure trials, and the defendants have been precluded from

having their constitutional rights to a speedy disposition of cases pending against them.

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Wherefore, the Committee on the Judiciary report the following bill and recommend its passage.

This bill became a law February 9, 1898.

There are other cases of a like kind antedating those herein specifically mentioned.

#### NECESSITY FOR THE PASSAGE OF THIS MEASURE.

This measure is not proposed for the benefit of Mr. Justice Moody. He can remain in office, whether it be passed or not. The measure is for the public good. Mr. Justice Moody can remain on the bench, as a matter of law, until ten years have elapsed and he attains the age of 70 years, if he should live so long, and then retire on pay. He accepted the office, knowing that should he serve ten years and reach 70 years of age, he could so retire on pay. He is a poor man dependent upon his salary. That he is unable to discharge the duties of his office is due to no fault of his. He can not now, and doubtless will never be able to resume his place on the bench. He can, as a matter of law, remain on the bench and draw his salary, which is necessary for his maintenance and support, or he can resign and then starve or become the object of charity. Your committee is unwilling to have the bench of the Supreme Court deprived of the necessary services of a ninth justice. Your committee does not believe that morals or ethics under the circumstances require the resignation of Mr. Justice Moody.

Your committee submits that the pending bill is in entire harmony with and effective of the provision of the Constitution creating a Supreme Court; that it accords with the spirit and purposes of section 714 of the Revised Statutes, providing for the retirement of judges, and is in line with the wise policy of that law; that it is similar to previous necessary legislation, and is just as necessary as the legislation which was had in any previous case.

Your committee concludes that it is for the public good to extend the retirement privilege afforded by the statute (Rev. Stat., 714) to Mr. Justice Moody, and therefore reports back H. R. 26877 with the recommendation that it do pass.

